

by a counter-claim in this way can or cannot be proved by parole. My impression—but it is only an impression—is, that as that would amount to a discharge of the debts on both sides, it is only competent to be proved *scripto*.

This case differs from *Habershon's* case in this respect, that there there was a meeting of directors at which the matter of the counter-claims that existed was taken up, and it was agreed to discharge the claim for calls by the claim due to Mr Habershon for fees as architect of the company, and that transaction was followed by an exchange of receipts, by which one debt was set against the other and both extinguished.

The Court pronounced an interlocutor repelling Mr Shaw's objections, and decerning against him to make payment of the sum certified to be due by him, with interest at ten per cent. till payment, in terms of the 121st section of the Companies Act 1862, and of article 16th of the articles of association of the company, and finding him liable in expenses.

Counsel for Liquidator—Balfour—Pearson. Agents—Cowan & Dalmahoy, W.S.

Counsel for Shaw—Trayner—Mackintosh. Agents—Lindsay, Paterson, & Co., W.S.

HOUSE OF LORDS.

Monday, February 18.

THE SCOTTISH EQUITABLE LIFE ASSURANCE SOCIETY *v.* BUIST.

(Before Lord Hatherley, Lord Blackburn, and Lord Gordon.)

(*Ante*, July 14, 1876, vol. xiii. p. 659, 3 *Rettie* 1078; and July 13, 1877, vol. xiv. p. 635, 4 *Rettie* 1076.)

Insurance—Acquiescence—Mora—Bar—Fraud.

Held (aff. judgment of the Court of Session, and referring to a precedent to *Anderson v. Fitzgerald*, 4 Clark and Finnelly's House of Lords Cases, 484) that it was no bar to an insurance company pursuing assignees of a policy of insurance for reduction thereof on the ground of wilful fraud and misrepresentation by the insured as to his habits and state of health, that certain of the officers of the company, after acceptance of the proposal and before the death of the insured, had suspicion as to his habits, but made no inquiry and gave no intimation to the assignees till after his death.

George Moir effected an insurance on his life with the Scottish Equitable Life Assurance Society for £2000, and in the succeeding month he assigned the policy to Mr Buist, who assigned it to others, retaining part of the interest to himself. Moir died in 1875, and an action was thereafter raised by the Society to have the policy reduced on the ground of fraud and breach of warranty and false statements.

The Scottish Widow's Fund and the General Life and Fire Assurance Company also brought reductions of policies granted by them to Moir

upon similar grounds. Their policies had also been assigned.

The policies were eventually reduced, it being, *inter alia*, found to be no defence that the policies had fallen into the hands of onerous endorsees, as reported *ante*, July 14, 1876, vol. xiii. p. 659, 3 *Rettie* 1078; and July 13, 1877, vol. xiv. p. 635, 4 *Rettie* 1076.

Buist, the defender in the action at the instance of the Scottish Equitable Society, appealed to the House of Lords.

In opening the case the counsel for the appellant stated that it was only fair to their Lordships to mention that in a previous case decided by the House on appeal from Ireland—*Anderson v. Fitzgerald*, 1853, 4 Clark and Finnelly's House of Lords Cases, 484—it had been held that misstatements and concealments such as had been made in this case were fatal to the policy. Counsel admitted that the present case could not be distinguished from that, and that it would only be wasting their Lordships' time to contend further against the judgment.*

LORD HATHERLEY said that the learned counsel for the appellant had exercised a wise discretion in not protracting the arguments in a case which they considered hopeless. He, for his own part, could not see any mode of getting over the previous decision, and as the learned counsel for the appellant were also unable to suggest any such mode, the result must be that the appeal be dismissed, with costs.

LORD BLACKBURN and LORD GORDON concurred.

Interlocutor appealed from affirmed, and appeal dismissed, with costs.

Counsel for Appellant—Southgate, Q.C.—Scott.

Counsel for Respondents—Herschell, Q.C.—Balfour.

Tuesday, February 26.

KERR, ANDERSON, & COMPANY *v.* LANG.

(Before Lord Chancellor, Lord Hatherley, Lord Selborne, Lord Blackburn, and Lord Gordon.)

(*Ante*, June 1, 1877, vol. xiv. p. 494, 4 *Rettie* 779.)

Public Burdens—Glasgow Police Act 1866 (29 and 30 *Vict. cap.* 273), *sec.* 384—*Obligation to Fence River.*

The 384th section of the Glasgow Police Act 1866 empowers the Master of Works to call upon "any proprietor or occupier of a land or heritage to fence the same, or repair any chimney-stalk, . . . or any rhone, sign-board, or other thing connected with or appertaining to any building thereon, which appears to be dangerous."

Held (affirming judgment of Court of Session that a proprietor of lands which were bounded by the Clyde, a public navigable river, and through which there ran parallel to the river a public right-of-way, which was

* The argument submitted in the Court below on the point that the policy was in the hands of an onerous assignee, was not referred to by the appellant.